

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**MACHIRA SANTOS, as Personal
Representative of Daryl Spencer
Freeman, deceased and Next Friend
of Christian Freeman, a Minor,**

Plaintiff,

vs.

No. CIV-08-0897 MV/LAM

**BOARD OF COUNTY COMMISSIONERS
OF DONA ANA COUNTY, NEW MEXICO,
et al.,**

Defendants.

NUNC PRO TUNC ORDER APPOINTING GUARDIAN AD LITEM

THIS MATTER is before the Court on Plaintiff's *Motion to Appoint [] Guardian Ad Litem* (Doc. 27), filed on March 2, 2009. As stated in Paragraph 6, the motion is unopposed. In the motion, Plaintiff states that a proposed settlement has been reached by the parties and Plaintiff seeks the appointment of Joseph Holmes as Guardian Ad Litem for Christian Freeman, a minor child, in this action to protect his interests with regard to the settlement. The motion also states that the parties have agreed to split the costs and fees of the Guardian Ad Litem. *Id.* at ¶ 5. The Court has reviewed the unopposed motion, the record of this case and applicable law, and **FINDS** that the motion should be **GRANTED** and Joseph Holmes appointed as Guardian Ad Litem for Christian Freeman, a minor child.

IT IS THEREFORE HEREBY ORDERED that Plaintiff's *Motion to Appoint [] Guardian Ad Litem* (Doc. 27) is **GRANTED**, as follows:

1. Joseph Holmes is hereby appointed to serve as Guardian Ad Litem for Christian Freeman, a minor child, in this action.

2. The Guardian Ad Litem shall exercise his independent and professional judgment in the performance of the following duties:

a. to investigate on behalf of the Court and to review the settlement of this case proposed by the parties to see whether the proposed settlement is fair and reasonable as it relates to Christian Freeman, a minor child and is in the best interests of Christian Freeman, a minor child; and

b. to report to the Court, in writing and orally at a hearing to be set at a later date, on (i) the outcome of his investigation and review, (ii) the fairness and reasonableness of the proposed settlement as it relates to Christian Freeman, a minor child, and (iii) whether the proposed settlement is in the best interests of Christian Freeman, a minor child.

3. The Guardian Ad Litem shall consider, in his investigation of the proposed settlement and report to the Court, the manner in which the settlement proceeds will be held and/or applied for the benefit of Christian Freeman, a minor child.

4. The fees and costs for Joseph Holmes services as Guardian Ad Litem shall be paid equally by the parties as ordered by the Court.

5. Christian Freeman, a minor child, is already represented by counsel in this matter. This order appointing a Guardian Ad Litem does not contemplate the Guardian Ad Litem's representation of Christian Freeman, a minor child, as an advocate but, instead, his appointment is as an "arm of the Court." The Guardian Ad Litem's responsibilities under this appointment are to the Court and not to the minor child.

6. This appointment of Joseph Holmes as Guardian Ad Litem is intended to convey upon him in this action all the immunities and privileges available to a Guardian Ad Litem as

articulated by the New Mexico Supreme Court in *Collins v. Tabet*, 111 N.M. 391, 395, 806 P.2d 40, 44 (1991).

7. The Guardian Ad Litem shall have access to all medical records regarding Christian Freeman, a minor child, including, but not limited to, all counseling and dental records. The Guardian Ad Litem shall also have access to all of Christian Freeman's, a minor child, medical bills.

8. The Guardian Ad Litem shall be entitled to participate in, and receive notice of, all proceedings in this action, and to receive copies of all documents filed in this action and all correspondence between the parties to this action.

9. Upon the entry of an order approving the proposed settlement, the Guardian Ad Litem's appointment will automatically cease and he shall have no further or continuing duties to the Court or the parties pursuant to this appointment.

10. At a status conference held on April 9, 2009, Mr. Holmes represented to the Court that he began his work on this case on February 19, 2009. See *Clerk's Minutes* (Doc. 29), filed April 9, 2009. Therefore, Mr. Holmes is hereby appointed as Guardian Ad Litem *nunc pro tunc* as of February 19, 2009.

IT IS SO ORDERED.



LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE

Submitted by: *(Prior to modification by the Court)*

/s/ Marc A. Lilley _____
Marc A. Lilley
Attorney for Plaintiffs

Approved as to form:

Approved electronically on 3/2/09

Kevin Brown

Attorney for Defendants